

ANALYSIS OF THE **UGANDA NATIONAL FAMILY POLICY**

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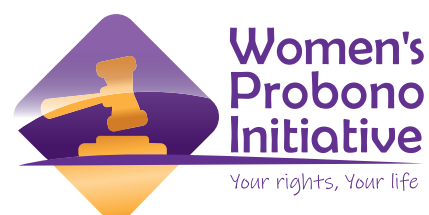


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ACRONYMNS



AIDS	Acquired Immunodeficiency Syndrome
CCPR	Convention on Civil Political Rights
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CESCR	Convention on Economic Social and Cultural Rights
CRC	Convention on the Rights of a Child
CRPD	Convention on the Rights of Persons with Disabilities
HIV	Human Immunodeficiency Virus
MGLSD	Ministry of Gender, Labour, and Social Development
PWD	Persons with Disabilities
UBOS	Uganda Bureau of Statistics
UDHR	Universal Declaration of Human Rights
UNHS	Uganda National Household Survey



Family has historically been considered the natural and fundamental group of society with states duty bound to protect this unit. At the centre of the current debate is the definition of a family which traditionally according to Christian values stems from marriage between one man and one woman, but it can also stem from a polygamous union according to customary and Muslim values. For one to have a family therefore presumes that one is either married or is a child, but statistics reveal that there are various types of families all of whom are deserving of the protection extended to a family. It has often been said of marriage – and indeed of the family institution that the only constant feature is its evolution.¹ Family, its conception, its role, the legal protections it enjoys, and its duties are in constant flux. In other words, there is no such thing as a “traditional family.”²

Family typologies have consistently changed across time, culture, and space. Family is a contextual construction that is born out of and responds to society’s socioeconomic, political, and legal needs at a given time. Indeed, the earliest version of a family arose as a response to early humankind’s shift to settler agriculture as society moved away from the hunter-gatherer existence.³ The family unit was necessary as a source of labour divided by biological determinations, that is male and female, each playing a

different economic and social role. Since then, over 10,000 years later, different iterations of the family have come and gone each leaving behind some vestiges as it morphed. At the crux of the right to protection of the family is consent prior to entering a marriage by both parties, recognition of the family as the fundamental unit of society, guarantee of the right to privacy and adequate standard of living, equality before, during and upon dissolution of the marriage and protection of the rights of a child within a family. Cross-cultural influences have had a major influence on the development of family life, law, and policy⁴.

The MGLSD developed the Uganda National Family Policy in 2020 to guide various stakeholders in promoting and safeguarding the important role of the family, addressing the challenges affecting the family institution and enhancing its capacity to fulfill its social, cultural, economic, and political functions considering the obligations of Uganda under international, regional, and national legislation. This analysis seeks to review the Uganda National Family Policy considering Uganda’s undertakings on human rights at an international and regional level and make recommendations on how the policy can best adopt international standards when it comes to regulating around family.

- 1 E Dibia “The Changing Nature of the Family and its Duty as Foundation for Morals and Sustenance of Core Societal Value” 2014 *Journal of Sociology and Social Work* 2(1); OECD “Families are changing” accessed at <https://www.oecd.org/els/soc/47701118.pdf>; J Walker, D Marjoribanks & G Misca “The Changing Nature of Family Life and Family Justice” 2019 *Family Court Review* 57 (3)
- 2 R Sear “The male breadwinner nuclear family is not the ‘traditional’ human family, and promotion of this myth may have adverse health consequences” 2021 *Philos Trans R Soc Lond B Biol Sci* 376 (1827); B Luscombe “There Is No Longer Any Such Thing as a Typical Family” 4 September 2014 *TIME Magazine* accessed at <https://time.com/3265733/nuclear-family-typical-society-parents-children-households-philip-cohen/>;
- 3 S Hill “The Evolution of Families and Marriages” accessed at https://www.sagepub.com/sites/default/files/upm-binaries/41374_1.pdf; K Itao & K Keneko “Evolution of family systems and resultant socio-economic structures” (2021) *Humanities and Social Sciences Communication* accessed at <https://www.nature.com/articles/s41599-021-00919-2>
- 4 See for instance MT Morley “Developments in Law and Policy: Emerging Issues in Family Law” 2003 *Yale Law and Policy Review* 12(169) accessed at <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1622&context=articles>; CM de Aguirre “The evolution of family law: changing the rules or changing the game” accessed at https://www.canlii.org/en/commentary/doc/2018CanLIIDocs10869#!fragment=zoupio-_Toc3Page2/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEts-BaAfx2zgGYAFMAc0lBMASgA0ybKUIQAIokK4AntADkykREJhcCWfKWr1m7SADKeUgCEIAJQCIAgVsA1AIIA5AMK2RpMACNoUnYhISA https://zaguan.unizar.es/record/56147/files/texto_completo.pdf; J Payne “The Evolution of Family Law: Past, Present and Future: Reviewing the Past Fifty Years” accessed at

SUMMARY OF THE POLICY



The Policy positions itself as providing strategies for unlocking the opportunities and potential of the family as a vehicle for state formation, social stability, nurturing and parenting responsible and productive future generation for socio economic transformation. The intended outcomes of the policy are to reduce cases of domestic violence, improve trust within the household and community, improve learning outcomes and work ethics. The policy lists its specific objectives as existing to promote a holistic approach towards parenting and nurturing for responsible and productive citizens, promote adequate preparation for marriage, promote effective management of emotional challenges and promote sustainable economic empowerment of families for social support, family friendly services and facilities that enhance family stability.

The policy recognises the family as the foundation of the society for reproduction, production and community management, and a source of strength for guidance, emotional, economic, and social support for its members. It also recognises the family as a basic social unit that focuses on nurturing, guiding, educating, and socializing children and a place for economic production. It notes that the policy was developed to guide the various stakeholders in promoting and safeguarding the important role of the family, addressing the challenges affecting the family institution and enhancing its capacity to fulfill its social, cultural, economic, and political functions and defines key terminologies including family which is defined as a primary social group of two or more people, related through blood ties (of birth, siblings, and extended family ties), marriage, adoption, and placement regardless of whether they are living together under the same roof.

The policy points out that the changes in the structure of families in Uganda reflect the enduring tensions between traditional and modern values and structures. That overtime, globalization, urbanization, conflicts, poverty, high population growth and disasters have highly impacted on the traditional family set up in Uganda with widespread accounts of families abandoning key traditional practices in favour of modern ones, the major trend however remains the creation of systems of marriage and family organization that draws on both traditional and modern norms.

The policy blames the breakdown of the family on inadequate skills and knowledge on parenting, family poverty, marriage instability, harmful cultural practices and inadequate family regulatory frameworks which have led to dysfunction in families. The policy defines marriage as an institution of God containing a lifelong union between one man and one woman. It asserts that marriage is rooted in the original plan of creation and that the free consent of the spouses (man and woman) makes a marriage through a contract with each other. From this consent and from the sexual consummation of the marriage, a special bond arises between husband and wife that is lifelong and exclusive to fulfil a 5-fold purpose: companionship, enjoyment, completeness, fruitfulness, reproduction, and protection (wife, home, and children).

The policy lists its vision, goal, mission, values, and guiding principles. Its guiding principles include having the family as the first line of intervention, participation, decision making, equity and gender inclusiveness, respect for religious and cultural diversity, human rights, partnerships, and innovation. It also lists its values as cultural identity, patriotism, conflict resolution and reconciliation, wealth creation

and sustainability, planning for the family, parenting, resilient, integrity and Equality and equity. The policy mentions that its priority interventions shall be in four thematic areas including nurturing and parenting, marriage preparation, management of emotional challenges and family social

economic empowerment which it links to the international, regional, and national legal framework on families. It also highlights the cross-cutting issues that affect families like HIV/AIDS, climate change, gender equality and equity, respect for human rights etc.



Families in Uganda take diverse forms that provide ideal benefits for its members, Uganda is a socio-culturally diverse country with 56 different ethnicities officially recognised by the country's Constitution.⁵ Each of these has different iterations of norms, practices and principles governing families. According to the UNHS 2019/2020 Uganda has a population of 41 million people with the sex ratio of 97 males per 100 females and 4.6 persons as the average for every household. Unsurprisingly, the average household size is larger in rural areas than in urban areas.⁶ In both rural and urban areas, majority of the households are male headed, that is, 70% in rural areas and 66% in urban areas.⁷ The report notes that 57% of household heads were either married in monogamous unions are living together as if they are married in such arrangement, 11.2% are living together in a polygamous situation, 12.9% are divorced or separated, 13% have lost a spouse and 5.5% have never married, with at least 8 in every 10 households having a child living with them.

Uganda also has a young population with 54% of Uganda's population below 18 years and 44% below the age of 14 years. The same report notes that 3 in every 10 households (31%) is headed by women while 69% are headed by men although in Karamoja 65% of households are headed by women. The report notes that the number of child-headed households is negligible and does not provide a figure. This is a glaring omission. Between 24,000 – 28,000 households in Uganda are child-headed households.⁸ It is important to know whether this number is growing, decreasing, or has stalled and determine what factors, if any, have contributed to that trend. After all, child-headed households or families face peculiar challenges that must be addressed. One study found that "many child-headed households are not being supported at all and are vulnerable to exploitation and violence. A high number of these children are surviving in sub-standard living conditions."⁹ Not forgetting that sometimes though families might not always live together under the same roof.

⁵ See 1995 Constitution for the list of recognized ethnic groups.

⁶ The Survey defines "household size" to be the number of usual members in a household, that is, those who have lived in the household for at least 6 months in the preceding year.

⁷ A "household head" is the person considered by members of the household to be responsible for the day-to-day running of the household and for making the main decisions within that household even though s/he is not necessarily the main income earner of the household.

⁸ See *Daily Monitor* 20 May 2020 accessed at <https://www.monitor.co.ug/uganda/news/national/lockdown-worsens- plight-of-child-headed-families-1890984>

⁹ L Collins et.al. "Child-headed households in Rakai District, Uganda: a mixed-methods study" 2016 *Paediatr Int Child Health* 36 (1):58-63 DOI: 10.1179/2046905514Y0000000152

JUSTIFICATION



Per the Policy, families in Uganda face a myriad of negative challenges including improper nurturing due to inadequate participation of men in decision-making; limited knowledge of family care; increased child marriages; inadequate work-life balance; negative cultural beliefs; poor upbringing of husband and wife; absence of trust within the households; the limited value of self among others. It remains worrisome though whether the proposed interventions of the policy will adequately address these challenges. Today, the contestations around the “traditional family” revolve around several issues, for instance, who should be allowed to found a family? – can minors or sexual minorities be admitted into this revered institution? What form of family is recognized by the state? Are interracial or inter-ethnic families permitted or legal? Who is a member of the family? Who are so-called “illegitimate children?” What about children born through assisted reproductive technologies? What legal roles/responsibilities do those who are considered a family bear before, during and after the subsistence of the family such as regarding property ownership?

What of widow inheritance and bride price? These and many other questions have elicited different responses.

Cross-cultural influences have had a major influence on the development of family life, law, and policy.¹⁰ In *Obergefell v Hodges*, the decision that legalized same-sex marriage in the United States, the US Supreme Court stated that, “the lifelong union of a man and a woman always has promised nobility and dignity to all persons, without regard to their station in life¹¹. The Policy notes that “changes in the structure of families in Uganda still reflect the enduring tensions between traditional modern values and structures.” The question then remains what are traditional and what are modern values? What is clear is that because of cross-cultural exchanges, the nature of the family is in constant flux. Uganda has made international and regional commitments to protect the family as the basic unit of society, but it remains to be seen whether this policy protects all families or just some families.

¹⁰ See for instance MT Morley “Developments in Law and Policy: Emerging Issues in Family Law” 2003 Yale Law and Policy Review 12(169) accessed at <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1622&context=articles>; CM de Aguirre “The evolution of family law: changing the rules or changing the game” accessed at https://zaguan.unizar.es/record/56147/files/texto_completo.pdf; J Payne “The Evolution of Family Law: Past, Present and Future: Reviewing the Past Fifty Years” accessed at https://www.canlii.org/en/commentary/doc/2018CanLIIDocs10869#!fragment=zoupio-_Toc3Page2/BQCwhgziBcw-MYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfx2zgGYAFMAc0IBMASgA0ybKUIQAIokK4AntADkykREJhcCWfKW1m7SAD-KeUgCEIAJQCAGVsA1AIIA5AMK2RpMACNoUnYhISA

¹¹ 135 S. Ct. 2584 (2015) accessed at <https://supreme.justia.com/cases/federal/us/576/14-556/>



International human rights law

Uganda has signed onto and ratified several international instruments relevant to the right to found and sustain a family including the UDHR, ICCPR, ICESCR, CEDAW, CRC, CRPD and CCPR general comment no 19 among others. All these recognise the family as the foundation of society and urge states to protect the unit of the family. The instruments also prohibit discrimination and guarantee equality within a family, they also guarantee the rights to dignity, privacy and social security within a family and the policy rightly points out its reliance on these instruments which attract obligations for Uganda as a state. Suffice to say Uganda has not yet ratified the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages. At its core the Convention reiterates and reinforces the right of men and women of full age without limitation due to race, nationality, or religion to marry and found a family. In other words, states should not place any unreasonable barriers for those who might want to found a family. This provision finds expression in Uganda's legal framework.

It is important at this juncture to point out two key features of international and regional human rights law concerning families. The first is a reluctance to offer a definition that might be used to limit which families get state protection and assistance and which do not. The UN Secretary General has noted that whereas family policy may be based on "assumptions about the type of family that is prevalent in a country," states must enact

policies that cater to the explicit needs of families and to the requirements of special population groups (children, the elderly, persons with disabilities) and that recognize and respond in particular to different family contexts, the changing needs throughout life course of a family and the specific, local and regional features of family life.¹² The second important feature is the expansive definition of family. UN treaty-monitoring bodies recognize the existence of various forms of families including those that arise from a formal and lawful marriage and those that exist without such marriage.¹³

The UN Committee on Economic Social and Cultural Rights advises that families do comprise married and unmarried parents who raise children together or alone including stepparents, adoptive parents and foster parents.¹⁴ The UN Committee on the Rights of the Child has cautioned against a restrictive definition of family and notes that references to family must be understood within the local context and may mean "not only the nuclear family but also the extended family or even broader communal definitions including grandparents, siblings other relatives, guardians or care providers, neighbours etc."¹⁵ The implication is clear: states must account for all types of families that exist *de jure* or *de facto* within their jurisdictions without privileging one over the other. Families can be organized different in formats, and they must all have access to the same protections and resources from the state.

¹² Para 9

¹³ UN Women "A Contemporary View of Family in International Human Rights Law and Implications for the Sustainable Development Goals" 2017 Discussion Paper No 21 at p 16.

¹⁴ UN CESCR's Concluding Observations at the Fourth Periodic Report of Germany, E/C.12/4/Add.3, 10 August 2000, para. 122

¹⁵ UN "Report on the 28th session, Geneva 24 September 2001 – 12 October 2001" CRC/C/111 para 701

Regional human rights law

Uganda has ratified key regional instruments such as the African Charter, the African Children's Charter, and the Maputo Protocol which recognise the family as the natural unit of society and call on states to guarantee protection of the family, the instruments also guarantee equality between partners in marriage and guarantee the rights to dignity and privacy. The African Union has also come up with key documents that buttress the position of the family key among these are the Draft African Common Position on the Family and the African Union Plan of Action on the Family in Africa of 2003. The Plan of Action prioritizes 9 key areas for states. These are poverty alleviation; rights to social services - education, health, and reproductive health; promoting environmental sustainability - environment, water and sanitation, adequate shelter, and land ownership; rights, duties, and responsibilities; rights of protection for the family; strengthening family relationships; control of major causes of morbidity and mortality; ensuring peace and security; and follow-up, evaluation and monitoring.¹⁶

These instruments should guide states like Uganda in developing and enacting their own family policies. The Plan also highlights the indispensability of data collection and analysis in determining which services and protections families need. To that end, the Plan of Action calls for the establishment of a management information system for the continuous data collection, analysis, utilization, dissemination, storage, and retrieval of the status of the family at all levels. Without accurate, up-to-date data on families, states are incapable correctly diagnosing the problems afflicting families and prescribing the right policy solutions to address them.¹⁷

¹⁶ See para 8 of Plan of Action

¹⁷ Para 7 of Plan of Action.

¹⁸ A 2020 study of 6000 respondents found that 7 percent of those were married but lived separately for different reasons. See HiiL (2020) "Deep Dive into Divorce and Separation in Uganda" accessed at https://www.hiil.org/wp-content/uploads/2020/10/HiiL-Uganda-Deep-Dive-Divorce-and-separation_nline.pdf

¹⁹ See S Marks & R Rathbone (1983) "The History of the Family in Africa: Introduction" Journal of African Law 24(2) in contrast to S Harris-Short & J Miles 2011 *Family Law* Oxford

Family at the national level

In Uganda, the right to found a family is predicated on the right to marry under Article 31(1) of the 1995 Constitution. The provision guarantees the right of men and women above 18 years to among others, found a family. Nonetheless, families are not always created by marriage alone. This is a fact recognized by the Policy in its definition of "family" as a

*"Social group of two or more people, related through blood ties (of birth, siblings, and extended family ties), marriage, adoption, and placement regardless of whether or not, they are living together under the same roof (household)."*¹⁸

This expansive definition is welcome and leaves room for an inclusive approach to family. However, the scope of families recognized here can and should be broader. The protections accorded to the differing types of families may vary in accordance with their legal and socio-cultural status, but one cannot deny that these units serve an important function.¹⁹

Uganda has also adopted legislation that actualises the protection of families including the Children Act, Marriage Act, Customary marriage (Registration) Act, Hindu marriage and divorce Act, Marriage and divorce of Mohammedans Act, Domestic violence Act, Divorce Act, Penal Code Act, Succession Act, Land Act, the Local government Act, the Education (pre-primary, primary and post primary) Act. It should be noted though that the bulk of these are premised on families that form out of a marriage.



Historically marriage has been used as a channel to family formation, since the law provides for individuals getting married and then becoming parents and emphasises the upbringing of children within a family unit even in cases of adoption or fostering. In fact, until recently sexual activity was limited to marriage and up to now sex between people of the same gender is criminalised. The ideal family as recognised by law is one that encourages monogamy, procreation, industriousness, and is legitimised and recognised legally as a family and by society with many placing great value on being recognised as a spouse, child or sibling belonging to a certain family. It is through these families that individuals are groomed to the line of ideologies and adopt values that are espoused by the state like religious values, cultural values, homophobia, patriotism, capitalism and so many others. By idealising the ideal family and setting it as the standard to get protection for a family, the policy ignores families who do not conform to the ideal family and although the policy begrudgingly notes their existence it still goes on to reinforce the ideal family as the 'good' family and demonises other families as needing to be taught good family values to force their compliance with the ideal family. By doing this the policy fails to extend protection and provide interventions for all forms of families and instead discriminates against different families and members of families thus making them vulnerable to abuse as discussed below.

Definition of marriage and family

According to Ristroph in her paper 'Disestablishing the Family', families are institutions in which individuals find meaningful relationships, necessary nurturing and support, and a structure of authority independent of the state but they can also be a place of violence, abuse, brainwashing, discrimination and neglect and for this purpose states have taken on the duty to regulate the space of the family for one to ensure protection of the family but also to prevent the negative acts that sometimes happen within families²⁰ this can be seen in the criminalisation of matrimonial offences like bigamy and elopement but also in the enactment of the Domestic Violence Act.

In exercising this freedom to regulate families, Uganda has created a 'model legal family' by encouraging certain types of families while discouraging others as seen in the policy which encourages nuclear, monogamous, and heterosexual familial relations as seen when it emphasises the definition of marriage, read into the Marriage Act, as between one man and one woman and ignores all the other forms of marriages as recognised by the laws of Uganda including the customary marriages, the Muslim marriages and the Hindu marriages all of which although still heterosexual in nature are potentially polygamous. The policy in effect only addresses and provides for monogamous, nuclear, and heterosexual Christian marriages and no other also seen in the assertion that marriage is an institution of God.

²⁰ A Ristroph and M Murray 'Disestablishing the family' 119(6) The Yale Law Journal at 1236 – 1279 accessed at <https://www.jstor.org/stable/20698324>

This goes against African values of an extended family and unity despite different cultural differences which puts a cavity in the policy since Uganda is an African state and under National Objective XXIV of the National Objectives and Directive Principles of state Policy, it is the duty of the state to promote and preserve those values and prevent the definition of a family from being only centred to a monogamous nuclear family.

According to the statistics mentioned above 13.7% of Ugandans are Muslim and 1.4% practice traditional religions. We also see that only 57.4% of people are either married or living together in monogamous unions, the rest are either in polygamous unions, divorced, separated, never married, or widowed. This entire demographic is left out of the policy because they do not fit the bill of the preferred form of marriages and hence the protection of the family within the policy does not extend to them. This is discriminatory and violates the rights of people who would otherwise qualify for such protection. The policy seeks to create a model legal family understood to be nuclear, monogamous, and heterosexual premised on the Marriage Act. It is also clear that the Policy envisages that this ideal family is premised on Judeo-Christian values which privileges one version of a family.

This reinforces the hierarchical system of viewing families, where some of them are considered as 'good' while others are considered as 'bad' because they do not conform to the standards set by the society and in turn the policy, protection for people in such families is therefore very limited making them vulnerable to abuse and exploitation. The Policy also adopts a parochial conceptualization of family and marriage in several of its provisions, for instance, in

its situational analysis, it proclaims that "marriage is a life-long union between one man and one woman, an institution of God and a foundation for society." This is a patently illegitimate and narrow view of marriage and family. Whereas the Constitution permits only persons of the opposite sex to get married and found a family, marriage cannot be viewed as a life-long union if the parties involved do not wish it to be so. There are several mechanisms for dissolving marriages if the parties so wish. It is also unclear as to what the definition of marriage as an "institution of God" means given that different people organize their families around different principles that are not necessarily religious.²¹ In light of the foregoing, it is concerning that the Policy seems to restrict itself to and promote an "ideal" type of family in a country as diverse as Uganda.

The Policy takes an ahistorical and culturally exclusionary approach in attempting to impose a top bottom "model" family and ignores the reality that each of the 56 constitutionally recognized ethnic groups accept different types of family recognised by the different legal and customary regimes in Uganda. There is therefore no such thing as a model/ideal family. If the state is trying to privilege a version of family, it must create the circumstances responsible for bringing this to fruition. For instance, Uganda has a significant number of child-headed households because of the HIV/AIDS, mistreatment from adult caretakers, and broken families. As a result, children take on new roles, acting as household heads, making household decisions even when parents are still living, and supporting their younger siblings and do suffer loss and peril themselves.

²¹ In any event, a state policy that seeks to perpetuate a particular religious idea is most likely to violate article 7 of the Constitution which provides that Uganda shall not adopt a state religion. See N Muhumuza "The Constitutionality of Religious Education in Uganda" accessed at <https://repository.gchumanrights.org/handle/20.500.11825/1058#:~:text=Borrowing%20from%20jurisdictions%20with%20a,particular%20religious%20instruction%20is%20unconstitutional.>

Application of Human Rights-Based Approach (HRBA)

The Policy seems to prioritize narrow faith and religious values over the inclusive principles of a human rights-based approach contained in the international, regional, and national human rights documents discussed above. The Policy's problem analysis is indicative of this. For instance, it includes improper nurturing, poor upbringing of the husband and wife, negative religious beliefs, limited knowledge on management of emotional issues, among others. This analysis is what leads the Policy to describing marriage as "is a lifelong union between one man and one woman, an institution of God and a foundation for society."²² It notes that "viewed both as a natural institution and a sacred union so because it is rooted in the original plan of creation."²³ The idea of marriage as a godly union between man and woman was imported to African societies during the colonial era.²⁴

Uganda is a signatory to several human rights instruments that have an impact on family life some of which have been discussed above. The value of a human rights-based approach is that it centres those who are most marginalized, excluded or discriminated against. This requires an assessment of how gender norms, power imbalances and the different forms of discrimination interact and how these interactions affect the most marginalized segments of the population. The HRBA uses human rights standards and principles to guide all government action. Its point of departure is the standards contained in international and national human rights law.

To the extent that the Policy takes an exclusionary approach, such as defining

marriage and family life narrowly, it cannot be said to be following a human rights approach. International and national human rights law is much more accommodating of the types of families that require state protection. Merely adding that the Policy will be guided by human rights principles is not enough. A HRBA approach imposes duties on the state to guarantee rights and provide necessary services to families regardless of whether the state thinks it is the ideal family or not. A HRBA approach ensures that all families are catered for by the Ugandan state in accordance with the standards set by international, regional, and national human rights law.

Lack of empirical data

The Policy does not present concrete empirical evidence for some of the assertions it makes. Some of these appear to be based purely on conjecture and possibly personal biases. For instance, how is the "poor upbringing of husband and wife" determined and how does it then manifest for example in increased cases of suicide? Although the Policy does present some evidence for its claims, it is mostly devoid of the hard evidence that explains its necessity. This will most likely lead to a poor assessment of the problem. The importance of accurate, up-to-date, and disaggregated data cannot be over-emphasized before the Policy reaches these conclusions. Issues such as sexual assault of children and women by family members, poor school attendance, because boys are favoured to attend school over girls or even the effects of child employment, are given inadequate and insufficient attention as a result.

²² Draft Policy at page 9.

²³ *Ibid*

²⁴ This goes as far back as the 1886 decision in *Hyde v Hyde & Woodmanse* [L.R] 1 P. & D. 130 which defined marriage as "understood in Christendom is the voluntary union for life of one man and one woman, to the exclusion of all others." This definition is similar to that which the Policy proposes.

Archaic and colonial laws

The laws regulating and providing for family in Uganda are both archaic and colonial in nature. Part of the laws inherited from colonial rule include the Marriage Act and the Divorce Act both of which commenced application in 1904. The policy refers to the Marriage Act as one of the laws informing its formulation, but this law is over 118 years old and does not address the current realities of marriage today. These laws have been amended over the years either through case law or acts of parliament, but they have never been substantially overhauled to cater to the current dynamics in marriage as seen in the failure to define marriage, the failure to guarantee equality before, during and upon the dissolution of marriage, the failure to recognise pre-nuptial and post-nuptial agreements, the failure to include rape as a matrimonial offence and the limited grounds of divorce provided.

Equally, one of the constants of marriage and family law and policy is its inevitable evolution. The law must also follow suit. For instance, many Ugandans who contract marriages and found families would like to dissolve their unions while maintaining their legal obligations voluntarily and amicably to their children and sometimes their spouses. Existing law does not recognize the concept of a no-fault divorce or a marriage that is to be dissolved because of irreconcilable differences. The inevitable consequence of this situation is a family life that is riddled with strife, violence, and disharmony. The reason why no-fault divorces are not yet legal can partly be explained by the Policy's insistence that marriage be and is a "life-long union under God." This must change. Ugandans

must have the ability to freely contract and freely dissolve marriages without the state imposition of undue burden in the process. One study found that divorce and separation is the most common family problem in Uganda, accounting for nearly 40 per cent of all legal family-related problems that Ugandans encounter.²⁵ Women and children are most at risk of emotional, psychological, financial, and physical harm if family disputes are not adequately and justly handled.²⁶

All efforts to table a domestic relations bill in the country which addresses the realities of families as of today have so far been frustrated because of the refusal to depart from the traditional roles of women and men within a family and the failure to recognise that families in Uganda take various forms and all are deserving of protection under the law. For instance, there have been questions surrounding the dissolution of customary marriages and the return of bride-price²⁷. Whereas the Supreme Court outlawed the practice of returning bride-price, it is still prevalent and often with deadly consequences.²⁸

Reinforcing of patriarchal norms

The policy reinforces patriarchy by emphasising the gender roles of men and women in society, this is done by basing the existence of marriage as an institution of God, thus basing the ideal family on Christian values which at the core are based on patriarchy, but this is also seen when it emphasises the role of men to provide for and protect the family while women are meant to nurture and look after the home and it calls on the country at large to return to traditional

²⁵ HiiL (2020) "Deep Dive into Divorce and Separation in Uganda" accessed at https://www.hiil.org/wp-content/uploads/2020/10/HiiL-Uganda-Deep-Dive-Divorce-and-separation_Online.pdf

²⁶ *Ibid*

²⁷ JD Mujuzi "The Uganda Customary Marriages (Registration) Act: A Commentary" (2013) *Journal of Third World Studies* 30 (1).

²⁸ "Man murders father-in-law for failing to return bride price" Daily Monitor 24 September 2016 accessed at <https://www.monitor.co.ug/uganda/news/national/man-murders-father-in-law-for-failing-to-return-bride-price-1668316> ; See also Mifumi (2009) "Bride-Price, Poverty and Domestic Violence in Uganda" accessed at https://research-information.bris.ac.uk/files/188786724/Final_report.doc

family values promising to emphasise this in its education around good family values.

According to Perales in his paper, 'Religion, religiosity and patriarchal gender beliefs: Understanding the Australian experience,' the basis of a good Christian family is founded on the principle of being 'equal but different' and headship where men are meant to lead and women are meant to follow, men earn money and women tend to the household in some sort of complementary roles.²⁹ This perception is recurrent throughout the policy at hand, but this only serves to reinforce patriarchy which places women and the work they do beneath men and the work they do.

Patriarchal beliefs have been shown to disadvantage women in paid employment, work hours, housework, and childcare contributions, as well as evidence that they trap women into unhappy marriages. There is also growing evidence that domestic violence is associated with attitudes and beliefs about gender that privilege men and dehumanise women. The Policy's reliance on family values premised on religious dogma maintains a hierarchical structure with men at the top and women and children as a subordinate class.

The Policy does not even mention patriarchal norms and values as part of the issues it seeks to address. Addressing discrimination must be at the heart of any family policy and law efforts. The 1995 Constitution guarantees a wide range of human rights including women's rights to equality and freedom from discrimination and yet nearly two decades later discriminatory legislation, policy and practices continue in force due to the lack of political will to confront issues of inequality and discrimination holistically. Most of the

ground-breaking progress on this front has been achieved through court decisions on matters of divorce, criminalization, adultery, succession, and marriage which are all central to properly functioning families.³⁰ The Policy makes no effort to review some of these issues.

Deliberately ignoring some laws

The policy in highlighting the different laws and policies chooses to ignore critical laws that form the fabric of families, their formation and dissolution. These include the Customary Marriage (Registration) Act, the Children's Act, the Hindu Marriage and Divorce Act and the Marriage and Divorce of Mohammedans Act, these recognise marriages celebrated through other customs and religions other than Christianity and are potentially polygamous. It also makes superior the Christian marriage as the basis of founding a 'good' family thus contributing to the hierarchies that exist in determining what is a 'good' or 'bad' family. As already discussed this is problematic since it makes people who are not part of the ideal family seem less deserving of protection as a family unit thus contributing to their discrimination and making them vulnerable to abuse.

This contributes to the failure or refusal to register marriages under these laws which hinders data collection efforts. A 2016 report found that 70 per cent of couples under the age of 40 did not register their customary marriages with the Uganda Registration Services Bureau (URSB).³¹ In *Aboneka Michael & anor v Attorney General*, the Constitutional Court had an opportunity to determine the

²⁹ F Perales 'Religion, religiosity and patriarchal gender beliefs: Understanding the Australian experience' (2018) *Journal of Sociology* 55(2) <https://doi.org/10.1177/1440783318791755>

³⁰ M Ssenyonjo (2007) "Women's Right to Equality and Non-Discrimination: Discriminatory Family Legislation in Uganda and the Role of Uganda's Constitutional Court" 21 *International Journal of Law, Policy and the Family* DOI: 10.1093/lawfam/ebm010

³¹ C Kasujja "Ugandans not registering their customary marriages" *The New Vision* 15 September 2016 accessed at <https://www.newvision.co.ug/news/1435399/ugandans-registering-customary-marriages>

constitutionality of several provisions of all the legislations cited above.³² The petitioners challenged the fact that these laws provided for lower age of consent for those intending to contract marriages than what is provided for in the 1995 Constitution. Court found all the provisions in those laws that provided for age-of-consent below 18 as unconstitutional.

It is quite surprising that it has taken the Constitutional Court, government, and civil society this long to challenge and change the law 28 years after the promulgation of the 1995 Constitution. This is a cautionary tale for both the drafters of the Policy and those who seek to draw inspiration from it. There cannot be uncritical reliance on any legislation particularly that which was enacted before the enactment of the 1995 Constitution to improve family life in Uganda. The Divorce Act itself requires proof of a matrimonial offence before court can grant couples a dissolution of marriage. Many women are unable to afford lawyers' fees or to even navigate the court system are forced to remain in unhappy, violent, or psychologically taxing marriages and familial relationships.³³ Another example is the recognition of children outside marriage and adoption, the policy only recognises children got out of marriage and adoption and ignores those got out of guardianship, fostering, assisted reproductive technologies etc yet the Children's Act recognises these. This is a form of discrimination and therefore goes against article 21 of the Constitution and the rights of children specified under article 34 of the Constitution.

The policy also fails to recognise and acknowledge the Divorce Act, which is a key piece of legislation when it comes to the family because it guarantees equity during the dissolution of a marriage. As seen above at the crux of family rights is equality before, during and upon dissolution of a marriage,

the Divorce Act recognises that sometimes marriages fail, and couples separate and provides rules for the equitable separation of such couples who have shared so much during the times they were together. By failing to consider and highlight the Divorce Act, the policy chooses to ignore families that are no longer bound by marriage simply because they do not conform to the ideal family.

No guarantees for social protection

When considering international instruments on family rights one of the most outstanding tenets is on the right to an adequate standard of living for an individual and their family including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond their control. Such support extends to establishing supporting social services to enable parents combine family obligations with work responsibilities and participation in public life, through promoting the establishment and development of a network of child-care facilities.

The policy rightly notes that among the challenges that affect families and lead to dysfunction is the family poverty and failure to balance work and life but then fails to design interventions to address these challenges. The policy should have recognised the obligation of the state to provide social protection and safety nets for families going through a rough time by establishing funds to assist families in the event of disability, unemployment, death of a spouse, old age and so many other eventualities that are beyond the control of the families. Currently the country only supports people of old age

³² Constitutional Petition No 35 of 2021.

³³ See for instance B Kabumba "The right to 'unlove': The constitutional case for no-fault divorce in Uganda" 2021 *African Human Rights Law Journal* 21 (2) 1181-1202

with social assistance. The policy should have also designed interventions to support the work life balance like among others guaranteeing breastfeeding rooms in public spaces, childcare facilities, and part time work for nursing mothers.

Benchmarking and comparative analysis

The Policy should be enriched by measuring against proposed and existing sub-regional and regional policy frameworks. The Policy mentions that it is consistent with human rights principles enshrined in several policy frameworks including the Dakar/Ngor Declaration, the African Charter for Social Action, the Addis Ababa Declaration, the Maputo Protocol, and the Older Persons Protocol. This is for several reasons. First, the African Union has noted that “many countries are still lagging behind and fail to implement an effective protection and support strategy for the African family.” This, according to the AU, is partly due to low internalization of relevant international and regional instruments in addition to the lack of human, financial and

infrastructural resources to implement laws, policies, and programmes as well as a lack of public awareness of family issues. Testing the veracity of this assessment would have been useful in the determination of whether Uganda National Family Policy’s problem statement is useful, accurate and up-to-speed with regional instruments.

The other useful purpose of comparative analysis is found in Kenya’s National Family Promotion and Protection Policy. Although Kenya’s Policy is still a draft, it is instructive in several crucial respects, and it is prudent to highlight just one. The Kenyan Policy highlights several family typologies that it seeks to serve. These include the nuclear family, those in cohabitation, single-parent families (which are mostly women-led), skip-generation or grandparent-headed families, polygamous families as well as blended families which can arise from various situations such as divorce, death of the husband or wife, adoption of children, among others. Several issues can arise due to the nature of how these families are organized and any Policy must recognize and seek to address that.



To The Government

- Data collection: It is imperative that this and any other policy be informed by accurate and up-to-date data. Without data, government assessment of a problem is likely to be flawed. When it comes to this Policy, some of the conclusions drawn do not appear to be supported by data as noted in the foregoing exposition.
- Expand the definition of a family by recognising the various types of families that exist and are entitled to protection under the law and policy. By recognising the diverse types of families, the policy will normalise the different ways people choose to make meaningful relationships, receive, and give nurturing and support and submit to authority independent of the state. (It must be reiterated that the laws must be updated to reflect the standards of contemporary constitutional and human rights law). This too must be supported by accurate data on the different types of families that exist within the country. To that end, it might be important for the government to draw lessons from other policies that the government has already passed as well as those from within the region such as the Kenyan National Family Promotion and Protection Policy.
- Mitigation of regressive judicial pronouncements. Although the overall trend of family law interpretation from the Ugandan judiciary has been positive, there have been instances that are acontextual and removed from reality. Policies such as this one are the executive's opportunity to cushion vulnerable family members from these misguided decisions.
- Expand the laws relied upon to formulate the policy by considering the Customary Marriage (Registration) Act, the Hindu Marriage and Divorce Act and the Marriage and Divorce of Mohammedans Act. These bring on to the table different interpretations of families and expand the definition away from the ideal family.
- Recognise the Divorce Act and the role it plays in families. By recognising the reality of divorce and separation in our society the policy will normalise families that live apart and are not bound by a marital bond thus allowing the government to better program and address the needs of such families.
- Consider including social protection, as an intervention, for families that are going through issues beyond their control like unemployment, disability, and disease among others. This can be through the dispensation of funds or implementation of programs designed to support such families to go through these difficulties.
- Design interventions to support families balance their work and personal life responsibilities including but not limited to expanding maternity leave to the time recommended for exclusive breastfeeding which is 6(six) months, guaranteeing breastfeeding rooms in work and public spaces, establishing childcare facilities, and allowing part time work for nursing mothers.

- Reconsider the roles of women and men as provided for in the policy aware that these reinforce patriarchy and hence perpetuate the discrimination of women and men within a family. The policy should expressly guarantee the equality of men and women within a family.
- Benchmarking. Countries in the region are adopting similar policies to address the concerns of family law and life. Uganda's policy can be enriched by drawing both positive and negative lessons from the policies drafted by societies with a similar socioeconomic and cultural outlook.
- The government should encourage promotion of programs on livelihoods in order to promote social economic empowerment since many of the challenges plaguing families arise from poverty.

To civil society

- Challenge regressive policies laws and judicial decisions. This is important because the government might not always want to adopt unpopular policies even though they are fair and just, it therefore falls to civil society organizations to challenge them using all available means.

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No.	INSTRUMENT	CONTENTS
INTERNATIONAL		
1.	UDHR	<p>Article 12 prohibits arbitrary interference with privacy, family, home, or correspondence</p> <p>Article 16 recognises the right to consensually found a family, if one is of age and recognises the family as the natural and fundamental group unit of society which is entitled to protection by society and the State.</p> <p>Article 25 recognises the right of everyone to a standard of living adequate for the health and well-being of their family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond their control.</p>
2.	CCPR	<p>Article 17 prohibits arbitrary interference with privacy, family, home, or correspondence.</p> <p>Article 23 recognises the right to found a family and places the family as the natural and fundamental group unit of society that is entitled to protection by society and the State.</p>
3.	CESCR	<p>Article 10 provides that the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and since it is responsible for the care and education of dependent children</p> <p>Article 11 recognises the right of everyone to an adequate standard of living for them and their family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions.</p>

4.	CEDAW	<p>Acknowledges the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children.</p> <p>Notes that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society.</p> <p>Also notes that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.</p> <p>Article 5 calls on all states to ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children.</p> <p>Article 11 calls on states to eliminate discrimination of women in the workplace by encouraging the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, through promoting the establishment and development of a network of child-care facilities.</p>
5.	CRC	<p>States that the family is the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, the family should therefore be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.</p> <p>Notes that children should grow up in a family environment, in an atmosphere of happiness, love and understanding to facilitate their full and harmonious development</p> <p>Article 5 enjoins States Parties to respect the responsibilities, rights and duties of parents and where applicable guardians of a child</p>

6.	CRPD	<p>Article 22 prohibits arbitrary interference with privacy, family, home, or correspondence.</p> <p>Article 23 recognises respect for the family and calls on states to take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood, and relationships, on an equal basis with others</p> <p>Calls on States Parties to provide early and comprehensive information, services, and support to children with disabilities and their families. Where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.</p>
7.	CCPR General comment No.19	<p>Recognises the family as the natural and fundamental group unit of society and states that the family is entitled to protection by society and the state</p> <p>States that arbitrary and unlawful interference with the family is prohibited and extends protection to the rights of a child as members of a family</p> <p>Mentions that there is no standard definition of a family since it differs from state to state but where a group of people is recognised as a family in law, they should be accorded protection therein.</p> <p>Entreats states to extend protection of families to various forms of families including unmarried couples, children of single parents etc</p> <p>Families should be guaranteed the possibility to live together and procreate.</p>

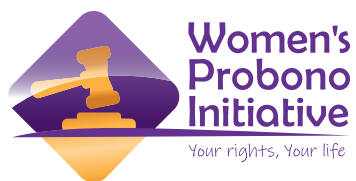
REGIONAL

8.	African Charter	<p>The African Charter on Human and People's Rights in Article 18 recognises the family as the natural unit and basis of society which shall be protected by the State which shall take care of its physical health and morals.</p> <p>It also recognises the family as the custodian of morals and traditional values recognised by the community.</p> <p>Article 27 also recognises that every individual has duties towards his family and society, the State and other legally recognised communities, and the international community.</p> <p>Article 29 places an obligation on individuals to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to always respect their parents and to maintain them in case of need.</p>
9.	Maputo protocol	<p>Article 6 calls on States Parties to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage.</p> <p>That states should enact appropriate national legislative measures to guarantee among others that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected and that a woman and a man jointly contribute to safeguarding the interests of the family, protecting, and educating their children</p>
10.	African Children's Charter	<p>Article 18 recognises the right to protection of the family and recognises that for the full and harmonious development of their personality, a child should grow up in a family environment in an atmosphere of happiness, love and understanding.</p> <p>Article 10 protects the privacy of a child and prohibits arbitrary interference with privacy, family, home, or correspondence if parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children.</p> <p>Article 31 places responsibilities on every child towards their family and society, the State and other legally recognized communities, and the international community.</p>

NATIONAL

11.	Constitution of the Republic of Uganda, 1995	<p>Objective XIX provides that the family is the natural and basic unit of society and is entitled to protection by society and the State.</p> <p>Article 31 affirms the rights of the family that include the right of men and women of the age of eighteen years and above to marry and to found a family and their entitled to equal rights in marriage, during marriage and at its dissolution.</p> <p>In addition, it provides for the right and duty of parents to care for and bring up their children and for children not to be separated from their families against their will.</p>
12.	The Children Act, cap 59 as amended	<p>The Children Act, stipulates rights, duties and responsibilities of the State, parents, children, and guardians.</p> <p>It also establishes the Family and Children’s Courts for quick dispensation of justice on all matters which threaten the well-being of children in a family.</p> <p>The Act prohibits discrimination of children and provides for compulsory provision of parental care to the child with parents expected to take equal responsibility regardless of whether they are married or not.</p>
13.	Marriage Act, cap 251	<p>The Marriage Act which came into force in 1904 regulates Christian and civil marriages in Uganda.</p> <p>Specific to marriage between two persons of the opposite sex that is: a bridegroom (man) and the bride (woman).</p>
14.	Customary Marriage (Registration) Act, cap 248	<p>Recognises customary marriages and provides for the registration of such marriages in Uganda.</p> <p>Defines a customary marriage to mean a marriage celebrated according to the rites of an African community and one of the parties to which is a member of that community.</p> <p>It also recognises that such a marriage can potentially be polygamous.</p>
15.	Hindu Marriage and Divorce Act, cap 250	<p>Regulates the marriage of and provides for matrimonial causes between Hindus and persons of allied religions</p>

16.	Marriage and Divorce of Mohammedans Act, cap 252	Provides for marriages between persons professing the Mohammedan religion, and all divorces from such marriages celebrated or given according to the rites and observances of the Mohammedan religion customary and usual among the tribe or sect in which the marriage or divorce takes place.
17.	Domestic Violence Act, 2010	Protects family members from abuse by defining a domestic relationship, outlawing all forms of domestic violence in a home, providing for protection and relief for victims of domestic violence and punishment for perpetrators domestic violence.
18.	Divorce Act, cap 249	Provides for grounds for divorce between married couples and the procedure for instituting divorce proceedings.
19.	Penal Code Act, cap 120	Establishes a code of criminal law and punishment for offences relating to marriage and domestic obligations that threaten or have an impact on the family or its members. These include abduction, indecent assault, desertion of children and neglecting to provide food etc. for children among others.
20.	Succession Act, cap 162	Provides for succession matters for both testate and intestate succession in case of death of an adult male or female.
21.	Land Act, cap 227	Protects spousal interest during the sell, transfer, lease, mortgage, exchange and/or give away of family land.
22.	The Local government Act, cap 243 as amended	Mandates the local administration to provide education and health services to families within their areas of jurisdiction without discrimination.
23.	The Education (Pre- Primary, Primary and post primary) Act, Cap 13	Provides the responsibilities of parents and guardians in the education of children ranging from provision of basic needs, promotion of moral, spiritual, and cultural growth to promotion of discipline.



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